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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matters of)
)
Ameritech Petition)
for Forbearance From Application)
of Section 272 of the Act to)
Previously Authorized Services)
)
Southwestern Bell Telephone Company)
Petition for Forbearance From Application)
of Section 272 of the Act to Previously)
Authorized Telecommunications)
Relay Services)

CC Docket No. 96-149

**COMMENTS, AND PETITION FOR FORBEARANCE,
OF SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company ("SWBT"), by its attorneys, files these comments in support of Ameritech's amended Petition for Forbearance regarding Telecommunications Relay Services ("TRS"). SWBT also petitions the Commission, pursuant to Section 10 of the Communications Act of 1934, as amended (the "Act"),¹ to forbear from applying the requirements of Section 272 to SWBT's own provision of TRS, to the extent that Section 272 would apply to such provisioning. The Commission's grant of SWBT's and Ameritech's Petitions is required to ensure that these companies may continue to provide TRS to the widest extent possible and in the most efficient manner to the speech and hearing disabled, as Congress intended.

¹ 47 U.S.C. Section 160.

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I. DISCUSSION

TRS are telephone transmission services that enable an individual with a hearing or speech disability to communicate with a hearing individual in a manner functionally equivalent to one who does not have a hearing or speech disability.² In September, 1989, the MFJ Court concluded that TDD relay services (by which TRS were previously known)³ were “information services” under the Decree.⁴ In its recent Non-Accounting Safeguard Order,⁵ the Commission interpreted Section 272(a)(2)(B) to exempt previously authorized interLATA telecommunications services from the separate affiliate requirements of Section 272.⁶ However, the Commission concluded that previously authorized interLATA information services were subject to Section 272.⁷

In Kansas, SWBT provides TRS under contract with the not-for-profit Kansas Relay Services, Inc. (“KRSI”), which was formed by the Kansas Corporation Commission. The

² 47 U.S.C. Section 225(a)(3); 47 C.F.R. Section 64.601(a)(7).

³ Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Report and Order, 6 FCC Rcd. 4657 (1991) (“TRS Order”), at n. 1.

⁴ United States of America v. Western electric, Inc., Civ. No. 82-0192, Memorandum, September 11, 1989 (“Memorandum”), at 2 (Attachment 1).

⁵ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order, FCC 96-489, released December 24, 1996 (“Non-Accounting Safeguards Order”).

⁶ Id., at para. 78.

⁷ Id., at para. 79.

service is provisioned in a manner which, with respect to less than 10% of all TRS calls placed,⁸ utilizes an interLATA transmission component pursuant to a previously granted MFJ waiver authorizing SWBT to do so.⁹ SWBT operates a TRS center in Lawrence (within the Topeka LATA). TRS calls are linked to the TRS Center by means of 800 number communications links. However, in full compliance with the MFJ Waiver Order, SWBT returns all interLATA calls to the LATA of origination to be terminated through the calling party's presubscribed interexchange carrier.¹⁰

Subjecting SWBT's Kansas TRS to the separate affiliate and other requirements of Section 272 would not serve the public interest, nor would it meet Congress' mandate that TRS be made available "to the extent possible and in the most efficient manner."¹¹ Thus, forbearance from the application of Section 272 is appropriate, if not required.¹²

⁸ According to best estimates, only 10-15% of all such Kansas TRS calls placed are toll calls, of which half (i.e., 5-7.5%) are interLATA calls.

⁹ United States of America v. Western Electric Company, Inc., Civ. No. 82-0192, Order, November 6, 1989 ("MFJ Waiver Order") (Attachment 2).

¹⁰ Id., at 1-2.

¹¹ 47 U.S.C. Section 225(b)(1).

¹² Forbearance from enforcement of any regulation is mandated where enforcement is neither necessary to ensure just and reasonable charges and nondiscriminatory treatment nor to protect consumers, where otherwise consistent with the public interest. 47 U.S.C. Section 160(a)(1)-(3). For purposes of SWBT's Petition, the TRS services provided by it should be excluded from those "for which a separate affiliate is required" under Section 272(a)(2), and no portion of Section 272 should be held to apply to them. See, e.g., Non-Accounting Safeguards Order, at para. 270 ("If a BOC does not maintain a separate affiliate, subsections (e)(2) and (e)(4) cannot be applied because there will be no frame of reference for the BOC's conduct."); see also; Southwestern Bell Telephone Company's and Pacific Telesis Group's Petition for Forbearance from Application of Section 272 of the Communications Act of 1934, as Amended, to Previously Authorized [E911] Services, CC Docket No. 96-149, Reply (continued...)

First, requiring that SWBT's TRS operations be transferred to a Section 272 affiliate is not necessary to ensure just and reasonable charges nor to prevent any potential discrimination. SWBT's TRS operations are conducted in accordance with the contractual obligations agreed to between SWBT and KRSI, and the selection of SWBT as the Kansas TRS provider followed an open bid process in which KRSI considered several companies' bids. The FCC oversees administration of the interstate TRS cost-recovery fund. These facts ensure reasonable charges for the services rendered. Furthermore, SWBT is unaware of any complaint alleging either unreasonable TRS charges or discriminatory treatment of any telecommunications or information services provider. In fact, the MFJ Court specifically found that the RBOCs' provision of TDD relay service "would not impede competition in the information services market."¹³

Second, for the same reasons, subjecting TRS to the separate affiliate and other requirements of Section 272 is not necessary to protect consumers. To the contrary, consumers' interests have been well served by SWBT's selection and its integrated provisioning of TRS.

Third, saddling SWBT's Kansas TRS operations to Section 272 requirements would not serve the public interest. Requiring the formation of a new affiliate, requiring the transfer (or new hiring) of TRS operations center and other personnel, requiring the acquisition of equipment to provide TRS, and prohibiting SWBT from performing operating, installation and maintenance functions for the separate affiliate, would present very high obstacles to the continued providing

¹²(...continued)

Comments of SBC Communications Inc., filed May 6, 1997 ("SBC 911 Replies"), at 2 and n. 3 (supporting the same conclusion in the E911 context).

¹³ Memorandum, at 5.

of TRS on a cost-effective and efficient basis. In fact, the costs associated with such obstacles, though inestimable, would be very significant if not prohibitive. This is particularly so to the extent that a separate affiliate requirement with respect to the de minimis amount of interLATA TRS might, as a practical matter, force intraLATA TRS to be provided through the same affiliate.¹⁴

During its deliberations, the Commission should also consider the lack of clarity as to whether TRS are actually information services (to which any Section 272 requirements could attach in the first instance). Following the MFJ Court's 1989 determination, Congress passed the Americans with Disabilities Act of 1990 ("ADA"). Title IV of the ADA meant to extend "universal service" to the speech and hearing disabled, and Congress intended that TRS providers "have the same service obligations as common carriers generally."¹⁵ To further these goals, Title IV added a new Section 225 to the Communications Act.¹⁶ Section 225(a)(3) of the Act and the Commission's subsequent TRS rules adopted in 1991 expressly denominate TRS as "telephone transmission services."¹⁷

Moreover, TRS utilize "communications assistants" who act as "transparent conduits" who "must relay all conversations verbatim unless the relay user specifically requests

¹⁴ In addition, in various states within its five-state operating territory, SWBT is directly involved in the collection of charges for TRS and payments into the intrastate and interstate TRS cost-recovery funds. Administration of these several collection and payment functions would be needlessly complicated by their placement within any entity other than SWBT.

¹⁵ TRS Order, at para. 15.

¹⁶ TRS Order, at para. 2.

¹⁷ 47 U.S.C. Section 225(a)(3); 47 C.F.R. Section 64.601(a)(7) (emphasis added).

summarization.”¹⁸ Thus, it is true that the actual provision of TRS bears an earmark of basic service, in which “data on the receiving end is the same as what is transmitted.”¹⁹ Finally, any common carrier may provide, under tariff, certain CPE needed by the speech, vision, hearing or mobility impaired.²⁰

These facts and circumstances, unique to TRS, offer compelling reasons for the Commission to grant SWBT’s and Ameritech’s Petitions. They show that any placement of TRS into an “information services” regulatory artifice -- to the extent that the result would subject these services and operations to the separate affiliate and other requirements of Section 272 -- would be grossly unfair to both consumers and BOC providers of TRS.

Finally, as was noted in connection with SWBT’s and Pacific Telesis Group’s “911” Petition for Forbearance, the Commission already has suggested that it would be required to forbear from subjecting “educational interactive” services to Section 272 requirements.²¹ Consistent with its position in the 911 matter, TRS is no less important to spare from unnecessary regulation as educational interactive services. Thus, forbearance from applying Section 272 requirements to TRS is compelling for this additional reason.

¹⁸ TRS Order, at para. 13; 47 C.F.R. Sections 64.601(a)(5), 64.604(a)(2).

¹⁹ Petition for Declaratory Ruling That AT&T’s InterSpan Frame Relay Service Is a Basic Service, 10 FCC Rcd 13717 (1995), at para. 32.

²⁰ 47 C.F.R. Section 64.606(a)

²¹ Non-Accounting Safeguards Order, at para. 95; SBC 911 Replies, at 3.

II. CONCLUSION

For the foregoing reasons, SWBT requests that the Commission approve its and Ameritech's Petitions for Forbearance in all respects.

Respectfully submitted,

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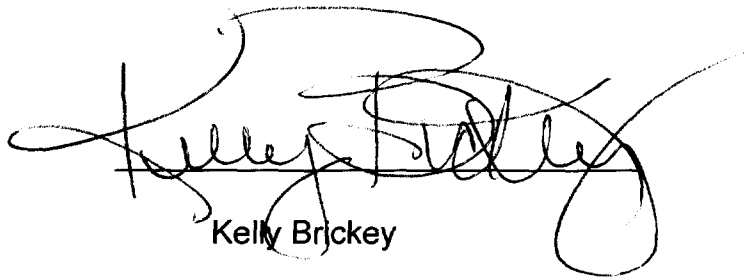
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CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Comments, and Petition for Forbearance, of Southwestern Bell Telephone Company", has been served June 4, 1997, to the Parties of Record.



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